CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER, NO. R2-2006-0027

For: Electro-Coatings Inc.
Former Emeryville Facility
1401 and 1421 Park Avenue
Emeryville, Alameda County

For the property located at:

Holden Street Right-of-Way
(Immediately adjacent to 1401 Park Avenue)

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Board), finds that:

1. Electro-Coatings Inc. (ECI) is a discharger because of its metal plating operations on 1401 and 1421 Park Avenue (which constitutes the former ECI Emeryville facility), which discharged metals and chlorinated solvents to soil and groundwater. ECI had knowledge of the discharge(s) or the activities that caused the discharge(s), and had the legal ability to prevent the discharge(s). The presence of chromium in soil adjacent to 1401 Park Avenue in the Holden Street Right-of Way (ROW) is a result of the former ECI operations. This Order specifically addresses residual chromium in soil in the Holden Street ROW, which is now polluting stormwater with chromium.

2. ECI implemented a remedial plan onsite beginning in April 1997. Over 100 injection points were installed throughout the 1401 Park Avenue and 1421 Park Avenue properties. A reductive mixture was injected into the injection points, which converted hexavalent chromium to an insoluble form of trivalent chromium, thereby remediating groundwater beneath the site. The average concentration of total chromium in the on-site wells has decreased by approximately 99.8% from 65,670 ug/L (March 1996) to 142 ug/L (March 2000). The average concentration of hexavalent chromium in these onsite wells has decreased by greater than 99.9% from 74,350 ug/L (March 1996) to non-detectable levels (March 2000).

3. The Board issued a letter dated September 7, 2000, with respect to granting conditional, no further action status for the 1401 Park Avenue property. This letter also made it clear that "additional investigation and remediation will be required on the remainder of the site, including the 1421 Park Avenue parcel and downgradient." Although 1401 Park was appropriately remediated and had a no further action letter, the letter indicated that further action was necessary in areas adjacent to 1401 Park. Limited sampling data in Holden Street shows soil samples up to 46,000 mg/kg of total chromium, as discussed below.

4. The 1401 Park Avenue property is currently being redeveloped into approximately 50 residential condominiums. The former brick building used for the ECI operations has been removed, along with the building slab. The front façade of the building has been preserved and will be incorporated into the new structure.

   Presently, soil on the 1401 Park Avenue property has been graded in preparation for constructing the foundation of the new building. Stormwater from the Holden Street ROW drains toward the 1401 Park Avenue property. As a portion of the street is not paved, this water flows over and through unremediated soil in the ROW and collects within the foundation excavation. Soil samples collected from the ROW in 2001 showed concentrations of total chromium as high as 46,000 mg/kg. Concentrations of approximately 40,000 ug/L chromium have been measured in the standing water within the excavation on the 1401 Park Avenue property. Concentrations of standing water in puddles within the unpaved Holden Street ROW, prior to it discharging onto the 1401 Park Avenue property have been measured to contain 80,000 ug/L of chromium. Moreover, discoloration can be visibly seen on the unpaved surface of the Holden Street ROW as well as weeping out of the vertical wall of the excavation.

5. The chromium-impacted soil, due to the solubility of the hexavalent chromium contained in it, is polluting stormwater that comes in contact with it. This stormwater collects and is discharged into the excavation on the 1401 Park Avenue property. As previously described, significant levels of chromium have been detected in the excavation pit water. Immediate measures are necessary to mitigate these impacts and prevent stormwater from becoming polluted by the chromium-impacted soil.

6. The current owners of 1401 Park Avenue have been extracting the polluted water from the foundation excavation and treating it to meet direct discharge standards, prior to discharging to the storm drain. As part of their construction process and as part of the process to build the foundation, a thin layer of concrete has been layered across the 1401 Park Avenue property. The concrete was sprayed in, covering all horizontal surfaces as well as most of the vertical sidewalls of the excavation, reducing the contact opportunity between stormwater and the exposed soils on the vertical wall along the Holden Street ROW. After this application, chromium levels in the pit water have been reduced in concentration from approximately 40,000 ug/L to 4000 ug/L. This is likely attributed to

the reduced contact opportunity along the vertical wall. However, water is still discharging over bare impacted soil in the Holden Street ROW into the excavation. Even with the concrete wall partially sealing off exposure, visual staining can be seen seeping through cracks in the concrete, further demonstrating that the impacted soil in the Holden Street ROW is a continuing source of pollution that is degrading water quality. Immediate actions are needed to mitigate these impacts.

7. **Basin Plan**: The Board adopted a revised Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) on June 21, 1995. This updated and consolidated plan represents the Board's master water quality control planning document. The revised Basin Plan was approved by the State Water Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters.

   The potential beneficial uses of groundwater underlying and adjacent to the Holden Street ROW include:

   a. Municipal and domestic water supply
   b. Industrial process water supply
   c. Industrial service water supply
   d. Agricultural water supply

   At present, there is no known use of groundwater underlying this site for the above purposes.

8. **State Water Board Policies**: State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. Given the Board's past experience with groundwater pollution cases of this type, it is unlikely that background levels of water quality can be restored. This initial conclusion will be verified when a remedial action plan is prepared. This order and its requirements are consistent with Resolution No. 68-16.

   State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this

discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

9. **Preliminary Cleanup Goals**: The discharger will need to make assumptions about future cleanup standards for soil and groundwater, in order to determine the necessary extent of remedial investigation, interim remedial actions, and the draft remedial action plan. Pending the establishment of site-specific cleanup standards, the following preliminary cleanup goals should be used for these purposes:

   a. Groundwater: Applicable water quality objectives (e.g., lower of primary (toxicity) and secondary (taste and odor) maximum contaminant levels, or MCLs) or, in the absence of a chemical-specific objective, equivalent drinking water levels based on toxicity and taste and odor concerns.

   b. Soil: Applicable screening levels as compiled in the Board's Environmental Screening Levels (ESLs). Soil screening levels are intended to address a full range of exposure pathways, including direct exposure, indoor air impacts, nuisance, and leaching to groundwater. For purposes of this subsection, the discharger should assume that groundwater is a potential source of drinking water.

10. **Cost Recovery**: Pursuant to California Water Code Section 13304, the discharger is hereby notified that the Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this order.

11. **Basis for 13304 Order**: California Water Code Section 13304 authorizes the Board to issue orders requiring a discharger to cleanup and abate waste where the discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance.

12. **CEQA**: This action is an order to enforce the laws and regulations administered by the Board. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of the Resources Agency Guidelines.

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, that the discharger (or its agents, successors, or assigns) shall cleanup and abate the effects described in the above findings as follows:

A. PROHIBITIONS

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.

2. Further significant migration of wastes or hazardous substances through surface or subsurface transport to waters of the State is prohibited.

3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

B. TASKS

1. INTERIM REMEDIAL MEASURES WORKPLAN TO MITIGATE STORMWATER QUALITY IMPACTS ORIGINATING FROM THE RESIDUAL POLLUTANTS IN THE HOLDEN STREET RIGHT-OF-WAY

COMPLIANCE DATE: *May 10, 2006*

Submit a work plan acceptable to the Executive Officer proposing interim remedial measures to address the immediate impacts to stormwater quality resulting from residual pollution in the Holden Street ROW and a schedule for implementing the proposed measures. Such measures that may be appropriate could include capping, upgradient diversion of stormwater, etc. The work plan shall contain a schedule for rapid implementation, as impacted stormwater is discharging onto the 1401 Park Avenue property. ECI shall reasonably accommodate and coordinate with the City of Emeryville (City) and the owners of the 1401 Park Avenue property as part of their efforts. The actions proposed should not cause a significant burden to the City or to the owners of 1401 Park Avenue and their efforts to move forward with construction.

2. IMPLEMENT INTERIM REMEDIAL MEASURES

COMPLIANCE DATE: *As proposed in Task 1. above and approved by the Executive Officer*

Submit a technical report acceptable to the Executive Officer documenting completion of necessary measures identified in Task 1 above, and as approved by the Executive Officer, in compliance with the schedule contained in that submittal.

3. **FINAL REMEDIAL MEASURES WORKPLAN TO ADDRESS RESIDUAL CHROMIUM POLLUTION IN SOIL FOR THE HOLDEN STREET RIGHT-OF-WAY**

COMPLIANCE DATE: *July 15, 2006*

Submit a workplan acceptable to the Executive Officer proposing final remedial measures for chromium-impacted soil, and if necessary groundwater, in the Holden Street ROW and a schedukle for implementing the proposed measures. The final remedy must be protective of human health and the environment, as well as, be compatible with the future use of the property as a public right-of-way. [ECI should recognize that as a public right of way, utility companies (PG&E, EBMUD, etc.) have a right under state law to locate their facilities in it and that the City has declared this area an underground utility district. Additionally, the City's Park Avenue District Plan calls for various streetscape improvements, including planting of numerous street trees in the area, including Holden Street.]

The workplan shall include an investigation to delineate the extent of contamination in soil and groundwater, to Environmental Screening Level (ESL) concentrations or concentrations that would trigger special handling or disposal (i.e. class 2), whichever is lower. The remedy must also include a source removal/control component. ECI should consult with the City (the owner of the ROW) and reasonably accommodate the City's concerns. Since remediation would likely involve disruption of the Holden Street access to the adjacent construction site at 1401 Park, ECI should consult with the owner of 1401 Park and must not unreasonably interfere with their construction activities. The proposed remedy shall also contain a schedule for implementation. The Board will allow for a 30-day public comment period on this workplan and will consider comments received, prior to approval.

4. **IMPLEMENT REMEDIAL ACTION**

COMPLIANCE DATE: *As proposed in Task 3. above and approved by the Executive Officer*

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in the Task 3. above, and as approved by the Executive Officer, in compliance with the schedule contained in that submittal.

5. **Delayed Compliance**: If the discharger is delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the above tasks, the discharger shall promptly notify the Executive Officer, who may consider revisions to this Order.

C. PROVISIONS

1. **No Nuisance**: The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in California Water Code Section 13050(m).

2. **Good Operation and Maintenance (O&M)**: The discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.

3. **Cost Recovery**: The discharger shall be liable, pursuant to California Water Code Section 13304, to the Board for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the discharger over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

4. **Access to Site and Records**: In accordance with California Water Code Section 13267(c), the discharger shall permit the Board or its authorized representative:

   a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.

   b. Access to copy any records required to be kept under the requirements of this Order.

c. Inspection of any monitoring or remediation facilities installed in response to this Order.

d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the discharger.

5. **Contractor / Consultant Qualifications**: All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.

6. **Lab Qualifications**: All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control (QA/QC) records for Board review. This provision does not apply to analyses that can only reasonably be performed on-site (e.g., temperature).

7. **Document Distribution**: Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:

   a. City of Emeryville Public Works Department (Maurice Kauffman)
   b. City of Emeryville, City Attorney (Micheal Biddle/Carol Victor)

   The Executive Officer may modify this distribution list as needed.

8. **Reporting of Hazardous Substance Release**: If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the discharger shall report such discharge to the Board by calling (510) 622-2369 during regular office hours (Monday through Friday, 8:00 to 5:00).

   A written report shall be filed with the Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.

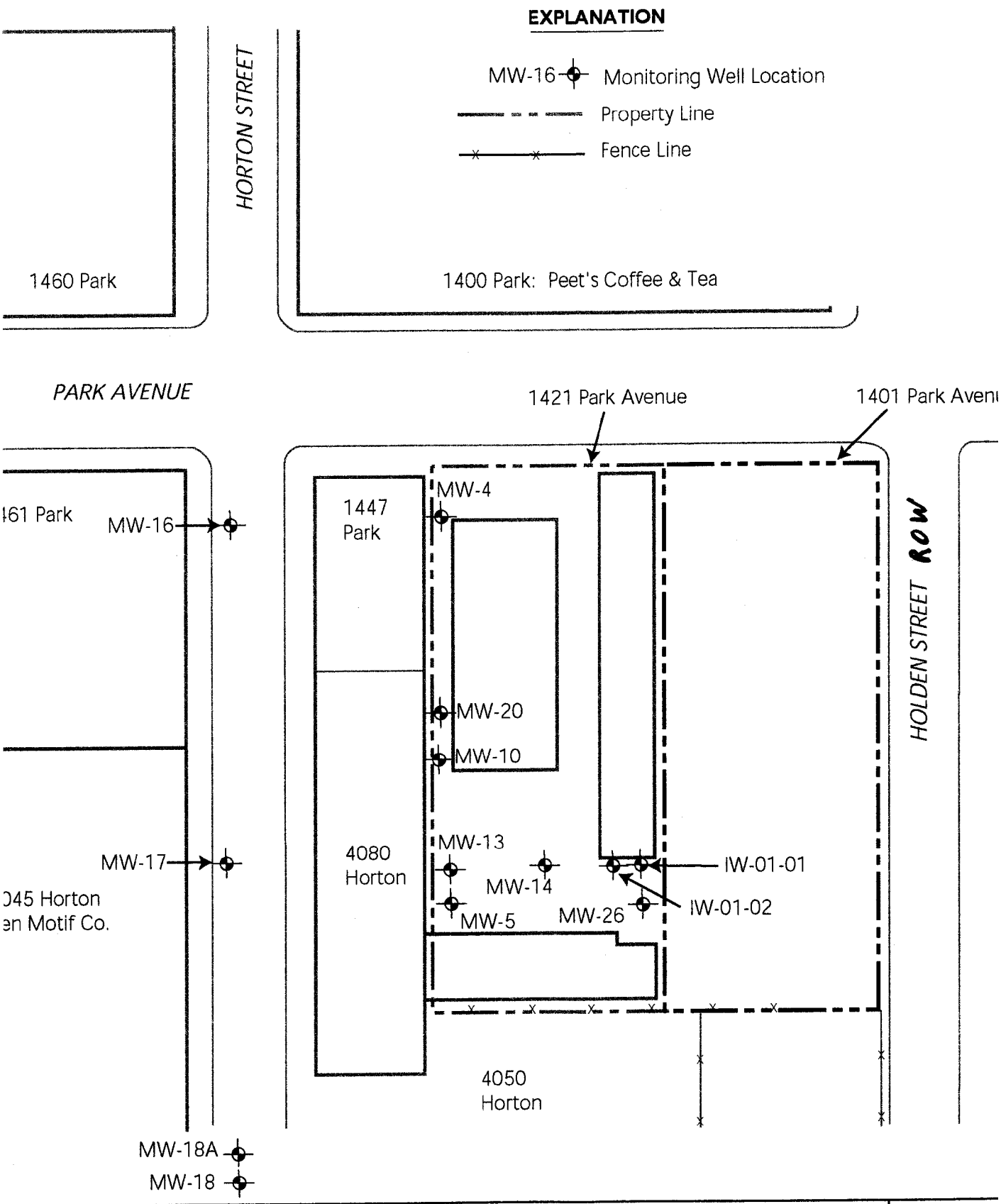
   This reporting is in addition to reporting to the Office of Emergency Services required pursuant to the Health and Safety Code.

Pursuant to California Water Code Sections 13304 and 13350, if the discharger fails to comply with the provisions of this Order, the Board may schedule a hearing to consider assessing civil monetary penalties of a minimum of $500 per day and up to $5,000 per day of violation of this Order, and to consider requesting the Attorney General to take appropriate enforcement action against the discharger, including injunctive and civil monetary remedies. This Order does not preclude the Board from taking appropriate enforcement action for past violations of the California Water Code.

Bruce H. Wolfe
Executive Officer

MAY 0 1 2006
Date

Attachments: Site Map



cinity Map

-Coatings, Inc. Facility
Park Avenue
ille, California

FIGURE

1